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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CHRISTOPHER BLAGG,

Petitioner,

v.

THE SUPERIOR COURT OF LOS
ANGELES COUNTY,

Respondent;

PEOPLE OF THE STATE OF
CALIFORNIA,

Real Party in Interest.

No. B209241

(Los Angeles County
Super Ct. No. MA024055)

ORIGINAL PROCEEDINGS in mandate. Lisa M. Chung, Judge. Writ granted.
Christopher Blagg, in pro. per.; and Jean Matulis, under appointment by the Court
of Appeal, for Petitioner.

No appearance for Respondent.

Steve Cooley, District Attorney (Los Angeles), Phyllis Asayama and Roberta
Schwartz, Deputy District Attorneys for Real Party in Interest.

Christopher Blagg petitions for a writ of mandate vacating the trial court's order denying him a hearing on his application for restoration of sanity pursuant to Penal Code section 1026.2.¹ Real party in interest concedes petitioner is entitled to the hearing. We agree and grant the petition, directing the trial court to vacate its order and issue a different order setting a hearing pursuant to section 1026.2. We decline to act on petitioner's additional request with respect to the challenge he has filed pursuant to Code of Civil Procedure section 170.6.

FACTUAL AND PROCEDURAL SUMMARY

Petitioner was found not guilty by reason of insanity to a charge of assault committed during a residential burglary. He filed an application for restoration of sanity pursuant to section 1026.2 in October 2007. The trial court reviewed the application under section 1603 and denied a hearing under section 1026.2. Petitioner filed a petition for writ of mandate in July 2008. We issued a request for preliminary response. In its preliminary response, respondent conceded petitioner is entitled to a hearing under section 1026.2 and to an independent psychiatric report. We issued an alternative writ of mandate, directing the trial court to either vacate its order denying petitioner a hearing under section 1026.2 and to make a new order granting the hearing, or to show cause why a peremptory writ of mandate should not issue. We also appointed counsel for petitioner.

In its return, respondent again conceded petitioner is entitled to a hearing as to whether he should be placed in an outpatient facility. As we explain, this is the first step in the process for restoration of sanity under section 1026.2. Real party in interest agrees that petitioner is entitled to an independent psychiatric report, citing *People v. Soiu* (2003) 106 Cal.App.4th 1191, 1201: "Once the remittitur issues, the trial court can consider defendant's request for appointment of a medical professional to assist in the outpatient placement hearing." The trial court is to consider this request once the remittitur issues.

¹

Statutory references are to the Penal Code unless otherwise indicated.

Counsel for petitioner notes that petitioner sent our court a copy of a motion to disqualify the trial court judge filed in the superior court during the pendency of this writ proceeding. She asks us to clarify that on remand after we grant the writ petition, the hearing to be held under section 1026.2 “is a new hearing for the purpose of [Code of Civil Procedure] section 170.6, subdivision (a)(2), and direct the assigned judge of the superior court to act upon the application to disqualify [the judge].”

DISCUSSION

“Section 1026.2 involves what has been described as a two-step process. [Citations.] The first step in the release process requires the defendant, who has filed a release application, to demonstrate at a *hearing* that he or she will not ‘be a danger to the health and safety of others, due to mental defect, disease, or disorder, while under supervision and treatment in the community.’ (§ 1026.2, subdivision (e).)” (*People v. Soiu, supra*, 106 Cal.App.4th at p. 1196.) If the defendant meets this burden, he or she will be placed in a conditional release program for one year. (*Ibid.*) This is called the outpatient placement hearing. (*Ibid.*) The second step, the restoration of sanity trial, normally occurs one year after the defendant is placed in a community outpatient program. A trial is held to determine whether his or her sanity has been restored. (*Ibid.*)

In *People v. Soiu, supra*, 106 Cal.App.4th 1191, 1197, the Court of Appeal held “that the trial court could not summarily deny [defendant’s] section 1026.2 release request without holding a hearing.” The trial court erred in denying petitioner the first step in the process, the outpatient placement hearing under section 1026.2.

Counsel for petitioner also asks: “[A]ssuming the anticipated relief for a hearing under section 1026.2 is realized, specification by this Court that it will be a new hearing for purposes of section 170.6 will ensure judicial economy for two reasons. First, it will resolve any uncertainty as to the applicability of section 170.6, subdivision (a)(2) when the matter returns to superior court, and eliminate the need for petitioner to file yet another petition for writ of mandate in the event that his disqualification motion is denied. [¶] Secondly, it could affect the need of a related appeal to continue going

forward and consume even more resources. An appeal of the same superior court order is currently pending in this Court [in] the case of *People v. Christopher Blagg* (B209380). . . . In light of Real Party's concessions, it is inevitable that this appeal would result in reversal. In that case, petitioner would undoubtedly be entitled to a new hearing and the right to disqualify the judge under section 170.6, subdivision (a)(2). It would not serve anyone's interests to make petitioner wait until an appeal winds its way through the system just to secure his rights under section 170.6. [¶] For all these reasons, petitioner respectfully requests that any relief that this court grants with respect to a new hearing also specifies that the rights under section 170.6, subdivision (a)(2) apply."

We do not address this issue because the trial court has not had an opportunity to consider the challenge.

DISPOSITION

Let a peremptory writ of mandate issue directing the trial court to vacate its order summarily denying without a hearing petitioner's section 1026.2 application for release, and to grant such a hearing. This order is final forthwith and the clerk is directed to issue the remittitur immediately.

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EPSTEIN, P. J.

We concur:

WILLHITE, J.

SUZUKAWA, J.